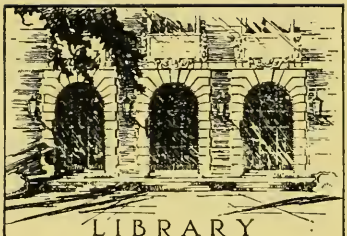

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WORKMEN'S COMPENSATION IN ILLINOIS

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EDITORIAL NOTE

The Institute of Labor and Industrial Relations was established in 1946 to "inquire faithfully, honestly, and impartially into labor-management problems of all types, and secure the facts which will lay the foundation for future progress in the whole field of labor relations."

The Institute seeks to serve all the people of Illinois by promoting general understanding of our social and economic problems, as well as by providing specific services to groups directly concerned with labor and industrial relations.

The Bulletin series is designed to implement these aims by periodically presenting information and ideas on subjects of interest to persons active in the field of labor and industrial relations. While no effort is made to treat the topics exhaustively, an attempt is made to answer questions raised about the subjects under discussion. The presentation is nontechnical for general and popular use.

Additional copies of this Bulletin and others listed on the back cover are available for distribution.

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WORKMEN'S COMPENSATION IN ILLINOIS

by Arnold R. Weber

A CHECK LIST OF THE CONTENTS

(For Employers, Supervisors, Stewards, and Workers)

WORKMEN'S COMPENSATION IN ILLINOIS by Arnold R. Weber*

INTRODUCTION

During every working day in Illinois, more than 200 workers are reported as injured on the job — more than 25 for each work hour.[1] Most of these people will receive workmen's compensation.

What is workmen's compensation? Who is eligible? How does an injured worker make a claim? Which employers are covered? This *Bulletin* is written for those in the State of Illinois who need or may need to know the answers to these questions.

But first, why do we have workmen's compensation? The answer is quite simple. Industrial injuries are costly. They are costly to the injured worker in physical and mental well-being and in loss of earnings. They are expensive for the businessman in the loss of key men, time, and production. They are costly to society in both economic and humanitarian terms.

Workmen's compensation, by itself, cannot prevent injuries, but it may help reduce the number of injuries by encouraging employers to introduce safety programs. In a more direct fashion, workmen's compensation eases the lot of the injured worker and his family and outlines the extent of the employer's legal liability.

HISTORY OF WORKMEN'S COMPENSATION

In the nineteenth century, an injured worker could sue his employer for damages. He had little chance of collecting, however, because it was generally up to him, under "common law," to prove that the accident (1) occurred in the performance of his duties, (2) was not caused by his own negligence or the negligence of another employee, and (3) was incurred while he was assuming an extraordinary risk of which he was unaware.[2]

Under these circumstances, few workers ever received damages for work-connected injuries. Many of the cases that did reach the courts were subjected to long, costly legal action which the worker could ill afford. In addition, the potential award was always uncertain because there were no rules relating an award to the extent of injury.

Workmen's compensation, as we know it, started in Europe. Germany had an early system under Bismarck.[3] England's first real workmen's compensation act was passed in 1897 following public investigations and working class agitation.[4]

In this country by the end of the nineteenth century many states had

* Prepared under the supervision of Richard C. Wilcock, associate professor of labor and industrial relations.

passed laws related to worker injuries. These early laws made employers liable for industrial accidents only in special cases. During the same period, however, several states appointed committees to investigate remedies for the growing problem of industrial injury.

In 1910, New York made the first real attempt to build a comprehensive system of workmen's compensation. Although the law was promptly declared unconstitutional, it paved the way for other efforts. The turning point came in 1917 when the United States Supreme Court upheld the New York and Iowa laws as legitimate exercise of the states' "police powers."[5] Once the legal groundwork was laid, workmen's compensation spread rapidly to other states. By 1921, forty-two states and all the territories had compensation acts. The other six states adopted such legislation between 1921 and 1948.[6]

THE PHILOSOPHY OF WORKMEN'S COMPENSATION

Workmen's compensation, like unemployment compensation and old age and survivor's insurance, is a type of "social insurance." It represents a particular concept of responsibility. Considerations of *blame* and *negligence* are no longer prime factors as they were under the common law system. Instead workmen's compensation embodies the view that the injured worker should be compensated for loss of income regardless of blame. The cost of industrial injury becomes the responsibility of the employer in particular and society in general.

Workmen's compensation is designed to replace the extreme variation of common law awards with a modest and more certain schedule of compensation administered by a special government agency. However, the courts still stand in the background as review agencies.

Indirectly, workmen's compensation aims to (1) rehabilitate the injured worker and return him to society as a useful, productive member and (2) encourage the employer to develop safety programs to reduce accident frequency. When compensation is charged to the employer, it becomes a significant factor in his over-all production cost.

DEVELOPMENT OF WORKMEN'S COMPENSATION IN ILLINOIS

Illinois was among the first ten states to enact workmen's compensation legislation. The first act in Illinois was passed on June 10, 1911, and went into effect May 1, 1912.[7] The law provided that an employer had the right to elect coverage, but it also stated that the usual common law defenses would not be available to employers in certain hazardous industries if they did not elect coverage. In 1917, following the landmark Supreme Court decision, coverage was made compulsory for extra-hazardous industries.

The law was completely rewritten in 1913 and again in 1951, but basically it remains unchanged.[8] It has been rephrased in more simple and direct language, and some provisions have been changed as a result of court decisions interpreting the Act.

Benefits have been increased periodically by separate amendments — most recently in 1955. In 1913, a schedule providing for loss of use of specific parts of the body was introduced. A 1917 amendment gave added benefits to injured workers if they had dependent children. In 1925, medical benefits were linked directly with the need for treating the injury.[9]

The original Act provided for administration by a three-man Board of Arbitrators. This was changed to an Industrial Board of three members in 1913. In 1917, the board was enlarged to five, and the administrative agency's name was changed to the Industrial Commission. The Commission operates as a part of the Illinois Department of Labor. In addition to the Workmen's Compensation Act, the Commission is responsible for administering the Illinois Occupational Disease Act, under which covered employees may receive compensation for disability proven to result from certain occupational diseases. Headquarters of the Illinois Industrial Commission are at 160 North LaSalle Street, Chicago 1.

PROVISIONS OF THE LAW

The foundation of the workmen's compensation system in Illinois is, of course, the law itself. The purpose of the Illinois Act, as specified in its preamble, is "to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment."[10]

COVERAGE

When a worker is injured on the job, he is eligible to receive workmen's compensation if the business is covered by the Act and if there is an employee-employer relationship. The employee who is injured must notify his employer not later than 45 days after the accident occurs. In addition, he may lose his right to compensation unless he files his application for compensation with the Industrial Commission within a year after either the date of the accident or the date of the last compensation payment.

AUTOMATIC COVERAGE

An employer whose business is considered extra-hazardous does not have the right to elect or reject coverage.[11] Coverage is *compulsory* for those employers whose business involves —

1. Erection, maintenance, or demolition of any structure.
2. Construction, excavation, or electrical work.
3. Carriage by land, water, or aerial service. This includes any loading or unloading related to the "carriage," and the distribution of the commodity by horsedrawn or motor vehicle. However, there must be more than two employees involved.
4. Operation of any warehouse or general storehouse.
5. Mining, surface mining, or quarrying.
6. Manufacture or use of explosive materials, molten metal, injurious gases, inflammable fluids or vapors, or corrosive acids.
7. Use of sharp-edged cutting tools.
8. Regulation by statute or ordinance concerning the use of machinery and appliances or safety of the employees and the public.
9. Work in connection with laying out or improving subdivisions of tracts of land.
10. Treatment of timber or wood with creosote or other preservatives.

The State and its political subdivisions also are automatically covered. Excluded from automatic coverage, however, are farmers or their employees or those who lease land for such purposes "no matter what kind of work or service is being done or rendered."

In deciding specific cases, the courts have described these general classifications more fully.

> For example, coverage is automatic for all employees of a firm engaged in "extra-hazardous" activities even though only some of the employees are actually involved in the more dangerous work tasks.[12] If an employer owns two separate businesses, however, they must be treated individually. The fact that one is "extra-hazardous" does not insure coverage of the other one automatically.[13]

In addition, these dangerous activities must be in the "usual course" of the employer's business.

> For example, if a real estate agent hires a man in a single instance to repair or tear down a building, the employee is not covered under the automatic provisions of the Act. However, if this same real estate agent customarily hires a construction crew to repair such units, the firm would probably be automatically covered by the Act.

This highlights the fact that a business does not have to be specifically listed as "extra-hazardous" to come under the compulsory provisions of the Act. Considerable discretion is given the Industrial Commission and courts in applying this section. If a certain business is judged to be "extra-hazardous" and is not specifically excluded, then coverage becomes compulsory.[14]

Thus the automatic provisions of the Act are quite flexible.

> Employees of a motion picture theater were covered automatically because the theater was affected by an ordinance requiring a fireproof projection room. And employees in a sawmill owned by a farmer were included automatically under the Act because the sawmill was operated as a separate business, not related to exempted farm operations.[15]

VOLUNTARY COVERAGE

If an employer is not included within these extra-hazardous classifications, he may choose to be covered. To do this he must file written election of coverage with the Industrial Commission or directly insure his liability under the Act with an authorized insurance company. Once a notice is filed with the Commission, the employer is bound to continue under the Act until January of the next year. If election has been made by obtaining insurance, the employer is covered until the policy expires or is cancelled.[16]

Over time, other groups besides farmers have been exempted from the coverage of the law. Domestic servants, the self-employed, inter-state railroad and maritime workers are generally not included in the Illinois workmen's compensation system. The latter two groups are covered, however, by similar federal legislation. Although employees of the State and political subdivisions are included under the automatic provisions, the issue has been brought to court in several cases with varying decisions.[17] The State government has elected coverage, however.

Approximately three out of four workers in Illinois are covered by the Act.[18] Most manufacturing firms are subject to automatic coverage because of ordinances or statutes regulating the use of machinery or relating to industrial safety. Most other employers have elected coverage to bring their liability under the provisions of the workmen's compensation system.

THE EMPLOYEE-EMPLOYER RELATIONSHIP

The fact that his firm is included under the Workmen's Compensation Act automatically or by election is not sufficient to guarantee coverage for an injured worker. There must also be an "employee-employer" relationship. *In any disputed case, the employee seeking compensation must prove the existence of this relationship.*

The terms "employee" and "employer" have been broadly defined by the law as guides to further interpretation. Thus, an "employer" includes "every person, firm, public or private corporation . . . who has any person in service or under contract for hire . . . ," and "employee"

is defined as "every person in the service of another under any contract of hire. . . ."[19] The employment contract may be oral or written.

In determining whether an employee-employer relationship exists, a vital factor is the *element of control* one party has over the other. If an employer controls both the type of work done and the results of the work, an employee-employer relationship will exist in most cases. With this principle as a guide, the payment of wages is not a necessary condition, nor does the payment of wages always prove the existence of an employee-employer relationship.[20]

The question is whether the individual is an "independent contractor" or an "employee." An independent contractor generally is considered to be a person who undertakes work for another but determines the specific methods himself.

> An electrician, who was installing fixtures in a building, fell off a ladder and broke his leg. He was not compensated because he was considered an independent contractor. He had been hired by the owner of the building for a given task, without particular regard to the methods used.[21] However, a house-mover assisting in moving a boiler for a public utility company at an hourly rate of pay was compensated when injured on the job. He was considered an employee.[22]

What happens if an employee is "loaned"?

> Suppose a worker was hired by one company but loaned to another for a particular job. In most cases, the employer who borrowed the employee is responsible for compensation if the employee is injured while performing this job.[23]

Coverage of employees of the State and its political subdivisions, where it exists, generally applies to all employees except "officials." In most cases, an "official" is one whose position has been specified by statute or ordinance.

> Thus, the injury of a city bridge-tender was uncompensated because his job was created by an ordinance. On the other hand, a policeman in another city was compensated for injury because there was no ordinance creating his position and elevating him to the status of an official.[24]

What happens if interstate commerce is involved in the employee's work? The important factor is the *place of contract* — that is, where the employee was hired.

> A watchman engaged in guarding a trucking van loaded with goods for shipment solely within the State may be covered by the Illinois law. But an inspector working with trains traveling between states may have to seek compensation under federal legislation if injured. If an employee is hired in Illinois but works in Indiana, generally he may seek compensation under

the Illinois law even though he was injured in Indiana. His case probably would be strengthened further if he lived in Illinois even though he crossed the State line to work.[25]

There is one exception to the employee-employer relationship rule.

If an employee is injured while working for a subcontractor who has not insured his liability under the Act, the general contractor who hired the subcontractor can be held liable for compensation. He becomes the "employer" under the law.[26]

Determination of an employee-employer relationship usually falls on the shoulders of the Industrial Commission. Each case that comes before it is viewed in the light of its own particular circumstances, and generalizations are difficult. The Commission, however, decides each case in a manner which it feels is consistent with the law. The courts generally have upheld decisions of the Commission.

WHAT ARE "ACCIDENTAL INJURIES"?

The Workmen's Compensation Act specifies that *accidental injuries* arising out of and in the course of employment are subject to compensation awards. In practice, it is exceedingly difficult to draw a fine line between accidental and nonaccidental injuries, because accidents generally must be traced to a particular occurrence at a specific time and place.[27]

If a painter falls from a ladder and breaks his leg, the circumstances of the case usually can be pinpointed. Barring other complications, the injury can be considered "accidental" and compensated promptly. However, if a steel worker develops a strained back not traceable to any particular task he performs, the case is not as simple. The employee, or his representatives, must *prove* that the injury was "accidental."

Although an injury is most firmly established as accidental if traced to a definite occurrence, one should not rule out other causes.[28] For example, the fact that a specific time of injury cannot be established does not automatically prevent compensation. The steel worker's strained back, upon investigation, may be the result of repeated lifting of heavy loads over a long period of time.

Many employees work under conditions of extreme heat or cold. Heat prostration or frostbite may be ruled accidental if the employee is subjected to a substantially greater hazard than the general public.

Thus, the widow of an employee who died from heat prostration while working in a boiler room on a hot day was awarded full compensation. The outside temperature created discomfort for the general public, but

constituted an added hazard to the boiler room employee — leading to his accidental death.[29]

PRE-EXISTING CONDITIONS

When an employer hires an employee, he cannot assume that the worker is "perfect" or "normal." Thus, an employee can receive compensation for aggravation of a pre-existing injury. Within the framework of workmen's compensation, however, it usually must be shown that the pre-existing condition was aggravated in close connection with an injury on the job.

> A diabetic employee stubbed his toe while at work. His foot became infected, and eventually he died as a result of the infection. Full compensation was awarded because it was ruled that the infection and subsequent death stemmed from aggravating his pre-existing condition. On the other hand, compensation was denied to survivors of an employee who died as a result of a perforated ulcer because it wasn't proven that a work injury worsened his condition.[30]

The situation is similar for diseases such as heart ailments, tuberculosis, and strokes. A work injury often may have grave effects upon a pre-existing condition and bring the total injury under workmen's compensation. Decisions depend upon individual circumstances.

> For example, a worker was overcome by bad air in a mine. His injury, added to a pre-existing asthmatic and heart condition, resulted in total disability. Only partial disability was allowed when it was ruled that the injury did not aggravate the pre-existing condition, but *added to* the overall disability. The employer was liable only for the disability caused by the "bad air."[31] If the asthmatic condition or heart ailment was proven to be aggravated by the "bad air," it is probable that a greater amount of disability compensation would have been allowed.

As a result of rulings on pre-existing conditions, some workers have difficulty finding jobs. Many companies are reluctant to employ workers with certain kinds of medical histories. Many businessmen also feel that compensation too frequently has been awarded where pre-existing conditions were involved. Some union specialists, on the other hand, maintain that the workmen's compensation system should recognize an individual's pre-existing condition as a more "human" approach to the problem of industrial accidents.

PSYCHOLOGICAL CONDITIONS

Hysteria, neuroses, and similar conditions also may be considered acci-

dental injuries if the circumstances of the case warrant it. In many instances the claim will stand or fall on the testimony of competent medical experts. Such cases require careful consideration to prevent unjustified awards on the basis of imagined ills.

> An employee was awarded compensation for the effects of a spinal injury although medical examination revealed no real physical disabilty. The Industrial Commission and the courts ruled that the inability of the employee to work stemmed from a hysterical condition arising from his original injury.[32]

HERNIAS

A hernia can be considered an accidental injury only under certain conditions, according to the law. To be compensated for hernia, an employee must prove that (1) it was of recent origin; (2) its appearance was accompanied by pain; (3) it did not exist prior to the accident; and (4) it was immediately preceded by a "trauma" or shock arising out of and in the course of employment.[33] In addition, hernias must be reported to the employer within 15 days rather than the 45 days specified for other types of injury. If an employee has a hernia when he is employed and it is aggravated by a work injury, it is judged like other pre-existing conditions.[34]

Some union spokesmen have criticized these provisions concerning hernia as unrealistic and unreasonable. Their criticisms are countered by management contentions that they are necessary to protect the employer from illegitimate claims.

THE "ARISING" QUESTION

In addition to being accidental, an injury must *arise out of and in the course of employment*. The "arising" question has been the source of much dispute in the administration of workmen's compensation. The provisions of the Act provide few specific guides for judgment. Again, each case must be investigated carefully in the light of the circumstances.

The "arising" provision attempts to establish a connection between the accident, the work the employee had been hired to do, and the conditions surrounding his job. As in other phases of the Act, if the claim is disputed, the burden of proof is on the employee.

WHAT ARE THE CIRCUMSTANCES?

If a lathe operator loses a finger or hand while carrying out his assigned task, there is very little doubt that the accident arose out of the conditions of employment. Other situations are less clear cut.

Generally, accidents occurring on the way to and from work, but sustained off the work premises, are not compensable. But if the employee is injured on the premises while reporting for work and using a customary path through the premises, compensation is more likely. If he falls or is hit while changing clothes or washing up, the injury also may be judged to arise from the conditions of his employment.

The "arising" issue is not restricted to specific work tasks.

A machinist walking through a railroad roundhouse on his way from work was hit by a switch engine. Because it was customary for him to take this path, his claim for compensation was upheld. In another instance a worker who fell from a high place while eating lunch was awarded compensation. The claim was approved because this on-the-job eating place was not forbidden or deemed hazardous.[35]

Accidents which happen away from the place of business may be given further consideration in certain cases. Many jobs require traveling or leaving the shop or office, and if additional risks are involved, it is quite possible that any injury incurred will be compensated.

An employee of a construction company was returning from an out-of-town job by automobile at the request of his employer. He was compensated for injuries suffered in an automobile accident while en route. However, another employee who was doing private business while supposedly working away from his place of employment was refused an award for injury. The injury was judged to have arisen outside the scope of employment.[36]

ARISING ON THE JOB

Most industrial accidents take place in the shop or plant. In many types of employment, a worker is hired to do only a specific job. *If an employee is injured while doing work which is forbidden or not assigned to him, his chances of receiving compensation may be considerably diminished.*[37] Employment often means the job for which the worker has been hired.

A drill press operator was injured while he was helping a milling machine operator — after he finished his own job. He would not receive compensation because he had not been assigned to assist on milling machines.

The picture differs, however, if the employee has been given *no specific instructions* concerning his job. In some businesses a well-defined division of labor is not the rule. Instead of receiving an assignment to a specific task, an employee may be told to "help out in the shipping department" or "help bring materials to production workers." An accident which happens when a worker is doing a job reasonably related to such general instructions is often considered to arise out of the conditions of employment.[38]

VOLUNTARY ACTS

When a worker is injured while volunteering on a job outside his regular duties, his rights to compensation may be diminished — even if his efforts benefit the employer. The "voluntary act," however, must be *clearly outside* the scope of employment and not something done in the past with the employer's approval.[39] The employee has assumed the added risk on his own initiative. An exception is when an employee acts in a sudden emergency to protect life or property.[40]

Although the interpretation of the law has been somewhat strict in judging what an employee may do, it has been less exacting on how the job should be done. An employee who violates a company's established way of doing a job does not necessarily forfeit compensation if injured. Many workers develop their own individual methods of doing a job.

> A punch press operator injured when feeding sheet metal "his own way" can be compensated barring other complications. The fact that the company has standard methods does not rule out compensation. The employee is viewed as an individual, subject to distinctly human failings.

HORSEPLAY

Many claims arise from injuries caused by "horseplay" on the job. Horseplay probably is found in every work situation, but sometimes it gets out of hand and unintentionally results in injury to a worker. The circumstances of the injury will determine the payment or nonpayment of compensation. If an employee is injured as a result of horseplay which he started himself, it is unlikely that he will be compensated. Such behavior is clearly not within the scope of "employment."[41]

On the other hand, if an employee is injured as a result of the "sportive acts" of others and he did not participate, the decision may be more favorable.

> An employee was knocked down and injured as a result of jostling while waiting in a pay line. Compensation was awarded because he was an innocent victim of horseplay.[42]

FIGHTS

In the administration of the law, injuries resulting from fights have been examined in the light of the over-all philosophy of workmen's compensation. That is, injuries from fights arising out of the job itself may be compensated. However, an award generally will be withheld if the injured worker is proved to be the aggressor or to have started the fight.

The survivors of a foreman who was killed by an employee he had fired were compensated. In another case, compensation was denied when an employee was injured in a fight over a personal matter.[43]

The "arising" issue is of vital importance in the administration of the workmen's compensation system in Illinois. The law provides only a general guide for its administrators. They may fall back on prior cases or court decisions, but the circumstances surrounding the injury must be taken into consideration in each case.

BENEFITS PAYABLE

Benefits payable depend upon the *nature and extent* of the injury or disability brought about by the accident. Six general classes of disability and several detailed schedules are provided in the law as yardsticks for determining the size and duration of benefits.

1. FATAL INJURIES

Application for compensation must be made within *two years from the date of the accident,* if no compensation has been paid previously under other provisions of the Act. If the employee received any compensation payments before he died from the effects of an injury, application must be made within *two years after receipt of the last payment.* In all cases, however, application for death benefits must be filed by the employee's survivor *within one year after the date of death.* This last provision is designed to protect the rights of the employee's survivors or dependents when death does not immediately follow the injury.

Payment for fatal injuries is determined by the number of survivors who were dependent upon the deceased employee. If an employee leaves a widow or children whom he was legally obligated to support at the time he was injured, death benefit payments are figured on the basis of 9.25 times the average annual wage earned by the employee.[44] However, benefits paid shall not be less than $6,000 nor more than $9,250.

Additional benefits are authorized if the employee leaves one or more children under 18 years of age in addition to his widow. Additional benefits for children are related to the minimum and maximum sums stated above.

Special provisions have been drawn up covering cases where 9.25 times the average annual wage of the fatally injured employee is only slightly above the maximum of $9,250. (See Table.) Presumably these provisions are designed to prevent survivors of such employees from getting proportionately higher benefits than those whose annual earnings times 9.25 is well over the maximum.

IF 9.25 TIMES AVERAGE ANNUAL WAGE IS —	WIDOW AND NO CHILDREN	CHILDREN UNDER 18			
		1 CHILD	2 CHILDREN	3 CHILDREN	4 OR MORE CHILDREN
$6,000 or less	$6,000	$6,950	$7,140	$7,330	$7,330
$6,000 — $9,250	9.25 times average annual wage	9.25 times average annual wage + $950[a]	9.25 times average annual wage + $1140	9.25 times average annual wage + $1330	9.25 times average annual wage + $1330
Over $9,250	$9,250	$9,750	$10,500	$11,500	$12,000
SPECIAL PROVISIONS					
$9,250 — $ 9,610		$9,610	$10,180	$10,750	
$9,250 — $10,180			$10,180	$10,750	
$9,250 — $10,750				$10,750	
Over $9,610		$9,750[b]			
Over $10,180		$9,750	$10,500[b]		
Over $10,750		$9,750	$10,500	$11,500[b]	

[a] This amount may not exceed $9,750. [b] Maximum amounts.

A still different method is used to increase benefits for dependent children where 9.25 times the average annual earnings falls between $6,000 and $9,250. Total compensation payments here are increased by a given amount specified for one or more children. (See Table.)

Payment of death benefits also may be affected by other factors. If the fatally injured employee is an *illegally*-employed minor under the age of 16, benefits are increased by 50 per cent. If an employee has been awarded compensation for the same injury before it resulted in his death, the amount already paid is deducted from the death benefit. Cost of necessary medical or hospital fees, however, is not deducted.

Since the total benefits are paid in installments over a long period of time, except where a lump sum settlement has been approved by the Industrial Commission, the continuing marital status of the widow is important. If the widow was not left with any dependent children at the time of her husband's death, benefits will be cut by 50 per cent if she remarries. This does not affect installment payments already made. But if she has dependent children, benefit payments are not reduced if she remarries.

In cases where there is one dependent child and he or she reaches the age of 18 and is physically and mentally competent at that time, benefit payments will be decreased proportionately. However, if a widow has more than one dependent child and only one of them reaches the age of 18, benefit payments will remain the same.

The existence of a legal marriage is, in most cases, sufficient to establish proof of dependency. The fact that the wife may be employed does not cancel out her rights to compensation as the widow of the deceased employee. In cases of divorce where the husband or wife has not remarried, the payment of alimony does not establish the ex-wife's right to some compensation upon the death of her ex-husband. The divorce ended the marriage and wiped out the legal obligation to support as provided in the Act.

A widow and surviving children have first claim to compensation benefits in cases of fatal injury. *But what happens when the employee does not leave a widow?* May others claim compensation?

> If there is no widow but the employee is survived by any parent, child or children, or husband who is *totally dependent* upon the deceased, one of these parties may receive compensation under the law. Once again, benefits will be equal to 9.25 times the average annual earnings of the fatally injured employee — with a minimum of $6,000 and a maximum of $9,250.

A claimant must prove that he was totally dependent upon the deceased. Mere payment of money from the employee to the claimant in the past is not necessarily positive proof of such dependency.

Generally these same standards apply to a husband whose wife has been working — a fairly common occurrence today.

If there is no surviving widow and no one who had been totally dependent on the deceased employee, *partial dependency* on the part of any parent, child, or children might provide a basis for a claim. The same benefit factor of 9.25 is applied to the annual wage of the deceased employee. However, the minimum payment in such a case would be $2,400 and the maximum $8,200.

Benefits will be paid on the basis of the percentage of dependency that is proven by the parent or child.

> For example, a fatally injured employee left no widow or children. However, his mother proved 25 per cent dependency on his earnings. The employee earned $2,000 per year. This sum was multiplied by 9.25 to give a total of $18,500. Twenty-five per cent of $18,500 equalled $4,625, the maximum amount that would be awarded to the partially dependent mother under the circumstances of the case.

The law also provides for situations where there is no dependency on the part of close family relatives.

> In these cases, grandparents or grandchildren or "collateral heirs," like nephews and nieces, may be awarded compensation if they prove that they were at least 50 per cent dependent upon the deceased employee. Compensation is computed in the same manner as in other cases of partial dependency with a maximum limit of $8,200.

Finally, if the fatally injured employee is without survivors who are legitimate claimants for death benefits, the employer is required to pay $500 to the undertaker or to friends of the deceased who have incurred burial expenses. An additional $400 is paid into a Special Fund. (The Special Fund is used for benefit payment under the "second injury" provisions of the Act. See page 24.) Death benefits, of course, may be paid to only one of the parties noted in the discussion. If there is a dispute over who is the beneficiary, the Industrial Commission makes the final decision, subject to appeal to the courts.

Survivors of fatally injured workers also may be eligible for benefits under the Federal Old Age and Survivors Insurance.[45]

2. TEMPORARY TOTAL DISABILITY

Fortunately most industrial accidents do not result in death. The more usual result of work injuries is some temporary or permanent disability. Almost all of these compensation cases initially fall into the category of "temporary total disability" — which covers the period immediately after the injury. It is the "period of the healing process" before it can be determined whether there is any permanent disability.[46]

An injured worker can receive compensation for temporary total disability if he is disabled for *more than six working days.* Six days is the so-called "waiting period" under the Illinois Act. In effect, compensation payments begin *as of the eighth day* of temporary total disability. *If the disability lasts more than 28 days, the injured worker also is paid for the first seven days.* As in all cases of injuries covered by workmen's compensation, notice of the accidental injury must be given to the employer within 45 days from the date of the accident.

The benefit schedule provides that compensation shall be equal to *75 per cent of average weekly earnings with a minimum base of $16.75 per week and a maximum of $34.00.* The percentage rate is increased to 82½ per cent if the injured worker has one child, 90 per cent if he has two children, and 97½ per cent of average weekly earnings if he has three or more children.

The minimum and maximum weekly benefit rates also are adjusted for the number of children as the percentage increases.

Thus, in a case where an injured worker would be entitled to the minimum of $16.75, the benefits would be increased to the following amounts:

1 child	$25.00
2 children	27.75
3 children	28.25
4 or more children	28.50

If an injured worker would be entitled to the maximum of $34.00 provided by the schedule, benefits would be increased by the following amounts:

1 child	$35.00
2 children	37.00
3 children	39.00
4 or more children	40.00

Under the prevailing level of wages in Illinois, the percentage basis for computing benefits has little significance. At the present time, maximum benefit rates apply in most cases.

For example, the average factory employee in Illinois earns approximately $70.00 per week. If he has a wife but no children, theoretically he is entitled to 75 per cent of his average weekly earnings or $52.50 while he is temporarily totally disabled. However, this amount is well over the $34.00 maximum provided in the schedule. Thus his compensation benefits would be stabilized at $34.00 for the period of his temporary total disability.

But suppose he has four children. Under the Act he is entitled to 97½ per cent of his weekly earnings. This amounts to $62.25, still well over the maximum weekly benefit amount of $40.00 specified in the schedule for a man with four children. Therefore he would receive $40.00 per week for the period of his temporary total disability.

Two additional provisions cover those with lower wage rates. If the injured employee's average weekly earnings are between $15.00 and $30.00, compensation is computed on the percentage basis previously noted, taking into consideration the number of dependent children. *This sum is then increased by an additional 32.5 per cent.* However, the total weekly benefit payment to an injured employee cannot be less than the minimum nor more than the employee's weekly earnings.

For example, an employee with two children has an average weekly wage of $28.00. He is entitled to 90 per cent of his wages, or $25.20, as his weekly disability benefit. But because his weekly earnings are between $15.00 and $30.00, his benefits are increased by 32.5 per cent, or $8.19. When this amount is added to $25.20, the total is $33.39 or more than his average weekly wage. Because his weekly benefit cannot be more than his weekly wage, he would receive only $28.00, the maximum amount allowed him under this section of the Act.

The second special provision provides that if an injured employee's wages are between $30.00 and $40.00, he may receive the maximum amount to which he is entitled. Again, he cannot receive more than his weekly earnings.

Benefit payments usually are paid either in weekly installments or at the same time interval used by the employer. An injured employee

cannot receive benefit payments for temporary total disability for more than 64 weeks.

3. PERMANENT PARTIAL DISABILITY

Certain permanent or long-lasting physical or mental incapacities may still disable a worker after his temporary injury has healed. Often these longer-lasting disabilities will not completely prevent a man from working, but they may limit his job abilities and thereby *reduce his former earning power.*

Compensation for permanent partial disability is measured in either of two ways. First, the amount of compensation paid may be related to the loss of income resulting from the disability. Second, loss of a "specific member" like a hand, foot, or eye is compensated on the basis of a schedule which provides a given number of weeks' compensation for each member.

> A bricklayer received temporary total disability compensation for a back injury over a period of 42 weeks during the "healing period." At the end of this time he found that his back was permanently weakened, and medical testimony confirmed the condition. Thus, he could not go back to his old trade where he made $80.00 per week. Instead he took a job as a watchman at $50.00 per week. Under the provisions of the Act, he would be entitled to compensation equal to 75 per cent of his loss of income.

These payments, however, are scheduled in the same manner as compensation for temporary total disability. Thus, a worker can receive only a maximum of $35.00 per week if he has one child, $37.00 if he has two children, and so forth. The percentage of lost income compensated will vary from 75 per cent to 97½ per cent, depending on the number of children the injured worker must support.

> Thus, in the case above, the wage loss is $30.00 per week. If the worker has two children, he will be compensated for 90 per cent of the loss. His weekly compensation payment then would be $27.00.

Compensation for permanent partial disability is not continued indefinitely. Compensation payments cannot be extended beyond eight years nor be more than the employee's survivors would have received as a death benefit. Also, if the partially disabled employee should increase his earnings, the compensation payment will be reduced accordingly. *If the disability itself decreases,* the employer may file for reduction or termination of compensation payments even though the employee's earnings have not reached their formal level. *The burden of proving that the disability has decreased lies with the employer.*

The injured employee must fulfill two conditions to receive compen-

sation for permanent partial disability. He must prove, by the testimony of competent medical authorities, that he has been disabled as a result of an industrial accident. He must also prove a definite loss of earnings. Compensation is not made solely for "pain and suffering." The law, however, does not require a man to work when he is in excessive pain from the effects of an injury or where continued work will hinder his recovery.

4. SPECIFIC LOSS

Reduction of earnings is not a necessary condition where there is the loss of use of a "specific member."

> Thus, if a tool and die worker loses a hand by amputation, which prevents him from going back to his old job, he may still be compensated even if he earns as much or more in any new job.

The Act includes a detailed schedule which provides compensation for a certain number of weeks for the loss of each "specific member." If an employee loses a *hand* in an industrial accident, he may receive 190 weeks' compensation; a *thumb,* 70 weeks; or an *arm,* 235 weeks. He would receive 140 weeks' compensation for loss of use of an eye and an additional 10 weeks' compensation if he lost the eye completely. The weekly compensation payment is computed in the same manner as compensation for temporary total disability. The important factors are the average weekly earnings of the worker and the number of his dependent children under the age of 18.

The specific injury schedule thus includes many parts of the body which are distinguished easily from the other "members," such as fingers, feet, toes, legs, and testicles. *Permanent total loss of hearing in one or both ears also is compensable.*

Compensation for specific loss is *in addition to* the compensation paid for the original temporary total disability. Thus the total amount of compensation paid for temporary total disability and specific loss may be more than would have been paid as a death benefit. In addition, payments for medical care or artificial limbs are not deducted from the total amount paid for specific loss. *Compensation for specific loss, however, rules out benefits under any other provisions of the Act except temporary total disability.*

Amputation is not a necessary condition for compensation. Benefits are paid for *loss of use* of an arm or leg as well as for actual physical loss of the member. Nor does the schedule work on an "all or none" basis. That is, payment often is made for *partial loss of use* of a specific member.

> A steel worker's leg is crushed when a load of bulk steel falls on it. The leg is not amputated, but after treatment the worker has a severe limp and

the leg has been permanently weakened. The parties to the claim may agree that the worker has lost 75 per cent of the use of the leg. Since complete loss of use of a leg calls for 200 weeks' compensation, the steel worker will receive benefits for 75 per cent of 200 weeks, or 150 weeks.

How about a second injury to the same member?

For example, the steel worker described above may go to work in a different job in the plant after he has recovered. His leg is injured again, and this time it has to be amputated. Amputation is complete loss. The employer now is responsible only for 25 per cent loss stemming from the second accident.

The major problem in the application of the specific injury schedule is determining the extent of loss of use of a "member." Often it is difficult to decide whether an employee has lost 33 per cent or 50 per cent of the use of an arm or toe. The text of the law provides some standards, but these generally apply to cases of amputation. For the most part, the extent of loss of use must be determined by technical medical testimony. In disputed cases, the Industrial Commission and arbitrators view this testimony in the light of their previous experience in administering the Act. It is necessary to determine not only the percentage of loss for general use, but also the amount of loss for industrial use in the work situation. A slight limp might be negligible in terms of physical use of a leg, but it may have a serious effect on the worker's ability to do a specific job requiring balancing or lifting.

5. PERMANENT TOTAL DISABILITY

The loss of specific members can mean *permanent total disability.* The Act specifies that the loss of any two members, such as two hands, two legs, or a leg and an arm, in a single accident constitutes permanent total disability. *Application of this section of the Act is automatic and cannot be reversed.* The fact that the disabled worker obtains employment at a later date does not affect his right to compensation for permanent total disability. It should be noted, however, that this provision applies only to loss of *major members or eyes.* For example, amputation of two toes, also included in the specific injury schedule, does not entitle the employee to compensation for permanent total disability.

The situation is somewhat different if the two major members are lost in two separate accidents.

An employee who has lost the use of his right arm in one accident obtains another job. He has a second accident, and as a result his left leg is amputated. Together, the loss of the leg and the arm is the loss of *two major members,* and thus he is entitled to permanent total disability auto-

matically. However, the second employer is legally responsible only for the loss of the leg, as covered by the specific injury schedules, and pays benefits in accordance with the schedule.

Additional compensation payments necessary to bring the benefits up to the level specified for permanent total disability are paid out of the Special Fund. Thus, the second employer pays only 200 weeks' benefits for the loss of the leg. A purpose of the "second injury" provision is to make it more feasible for employers to hire disabled workers. This provision applies in any case of loss or loss of use of a second major member or eye in a separate accident; it applies whether the previous loss had been due to accident, disease, or any other condition.[47]

Permanent total disability does not always require *loss* of two major members.

A lineman receives a severe electric shock which results in paralysis and complete loss of income. Medical evidence demonstrates that the worker's condition appears permanent. The employee cannot return to work in any capacity. Therefore a condition of permanent total disability exists, and compensation will be awarded accordingly.

A benefit award for permanent total disability does not necessarily end a case. A disabled worker may recover enough to work, but not at his old job. Since all or part of his earning power has been restored, compensation for permanent total disability may cease. If the worker makes considerably less at his new job than he did at his old one, he may receive compensation for permanent partial disability as outlined above.

Over a period of time, if the employee believes that his disability has increased and he no longer is able to work at his new job, he may file a petition with the Industrial Commission for review of his case. The petition must be filed within one year of the earlier termination or reduction of compensation. However, *an employee who has lost two major members would not have his compensation reduced or terminated even though he might take some kind of employment.*

Compensation payments for permanent total disability are based upon the payment schedule for temporary total disability. The same percentages, maximums, and minimums are in effect. These payments continue until the employee has received a sum equal to a death benefit. *After this total is reached, the disabled worker receives a pension.*

If the worker is disabled by loss of two members, his annual pension is equal to 12 per cent of the amount his survivors would receive as a death benefit. In other cases, a pension equals 8 per cent of a death benefit. A pension is paid in monthly installments as long as the person lives. It may be augmented by Federal Old Age and Survivors Insurance retirement payments if and when the worker is eligible.

6. DISFIGUREMENT

An employee who is seriously and permanently disfigured on his hand, face, head, or neck as a result of an industrial accident may receive compensation up to 42½ per cent of the sum that would be paid as a death benefit. Differences in social standards between the sexes are recognized. A female employee also may claim compensation for disfigurement to her arm, her leg below the knees, and her chest above the axillary line.

Payment for disfigurement rules out compensation for permanent partial disability. However, an employee can receive awards for both disfigurement and specific loss of use in cases where the disfigurement and specific loss involve two separate members.

The amount of disfigurement is settled by arbitration or by agreement of the parties. "Serious" and "permanent" disfigurement must be interpreted in each case.

> It is not necessary to prove direct loss of earnings because of the disfigurement,[48] nor is it likely that every small scar will be compensated. Instead, if the employee proves that the disfigurement will interfere with his usual employment or mark him as reckless and quarrelsome, his claim probably will be strengthened.

MEDICAL BENEFITS

Medical care is a highly important part of the benefit structure of workmen's compensation. Where accidental injury occurs on the job, *the employer is required to provide first aid and "all necessary medical, surgical and hospital services."* Such services are limited, however, to those which are "reasonably required" to cure or provide relief from the effects of the accidental injury. In addition, where the injury results in the amputation of an arm, leg, or foot, or the loss of an eye or any natural teeth, the employer is required to provide artificial members or braces, if necessary.

The employee must accept the medical services offered by the employer. He can select his own doctor or hospital services and be reimbursed *only when they are not provided by the employer.* If the worker rejects the employer's offer of medical care and uses his own doctor instead, he forfeits his right to these services under the Act.

On the other hand, the employer is bound to provide medical care *without limit* to cure or relieve the effects of the injury. However, the employer does not necessarily admit his liability by furnishing such care, nor does the fact that medical care was offered mean that the worker's claim for compensation will be granted later. This section of the Act was designed to prevent an employer from withholding necessary medical care intentionally.

It might be noted here that some injured employees may receive supplementary benefits under private programs. Some plans have been put into effect unilaterally by employers. Others are part of collectively bargained health and welfare programs. Typically, supplementary benefits are provided through accidental death and dismemberment clauses in group life insurance, group accident and sickness insurance, or sick-leave plans.[49]

Some private plans are not intended to supplement workmen's compensation and are limited to nonoccupational disabilities. A 1955 addition to the Act specifies that if an employee receives benefits from a private group plan which he should not have received because he suffered an occupational injury, the amount so paid "shall be credited to or against any compensation payment . . . made or to be made" under the Act.

COMMENTS ON THE BENEFIT STRUCTURE

The various benefit schedules are designed to measure the employer's responsibility for different kinds of disability and to provide the injured employee with adequate and automatic compensation when he needs it and is entitled to it. But application of these benefit provisions is not always simple. Usually technical medical testimony is necessary to determine the nature and extent of the disability. Past judicial and administrative decisions must be considered. The points of view and prior experience of the administrators also influence the final settlement.

This complexity often means uncertainty and dissatisfaction. Some of the following criticisms have been made: benefits have been far from adequate to meet the needs of the injured worker; benefit payments have not kept pace with either the rising cost of living or average wage rates; provisions for dependents are not adequate; the reduction of benefits to widows who remarry is unfair and discriminatory.

Various suggestions also have been made for changes in coverage: for example, that there should be compensation for partial loss of hearing and not for complete deafness only, and that the specific injury schedule should be expanded to include certain types of back injuries.

Most of these criticisms and suggestions come from union officials and those primarily interested in bettering workers' protection. Employer spokesmen voice equally strong views concerning benefits. They oppose unlimited medical care, periodic increase of benefits, and wide scope of disabilities covered. They point out that the specific loss schedule covers all major members, provision is made for additional benefits for employees with dependents, and loss of earnings is the basis for benefit payments in most cases of disability.

It would be overly optimistic to hope that the benefit provisions will ever be entirely satisfactory to all parties. Since they are the very heart of the workmen's compensation system, these provisions provide fertile ground for dispute and compromise, both in specific cases under the existing Act and in discussing amendments to the Act.

ADMINISTRATION OF THE LAW

THE SETTLEMENT PROCESS

A major purpose of the workmen's compensation system is to bring about the quick, fair settlement of claims between employees and employers. To help do this the law provides administrative machinery. In addition, and of almost equal importance, are the various informal procedures for settlement which have developed over the years. The settlement process thus represents a blend of various formal and informal procedures whose effect is felt at each level of decision provided by the Act.

Settlement may be simply an agreement between the employer and the injured employee on the amount of compensation to be paid. At the other extreme, it may require a decision by the Supreme Court of Illinois, the last step in the formal administrative machinery set up by the Act. In cases where the parties themselves cannot reach an agreement on compensation, application for adjustment of a claim is made to the Industrial Commission. The first step is a hearing before an arbitrator; second, before a single commissioner; and third, before a majority of the members of the Industrial Commission. If a dispute is not settled by the Industrial Commission, the case may be appealed to the Circuit Court and finally to the Supreme Court of Illinois.

MAKING A CLAIM

A majority of compensation cases are settled without dispute under the provisions and procedures of the workmen's compensation system. The injured employee reports his injury to his employer within the specified time limits. The employer provides necessary medical care and, working through his representative or insurance company, makes payment on the basis of the employee's disability.

When the employee has recovered from the effects of his injury and returns to work, compensation payments stop. A final report is submitted to the Industrial Commission specifying the type of disability and the total amount of compensation paid. This is called "settlement by final receipt."

The Act is intended to provide rapid and semi-automatic settlement. Many cases are settled in this way since nearly 50 per cent of compensable injuries involve only temporary total disability.[50] In addition, specific loss cases often are clear-cut and readily covered by the schedule outlined in the Act. Other cases of disability also may be worked out by the parties in an atmosphere of good faith and submitted to the Industrial Commission for approval.

Often, however, a dispute arises over the right to compensation, the amount of compensation payable, or some other point covered by the provisions of the Act. In such situations, the claim is submitted to the Industrial Commission for further action.

TIME LIMITS

Time limits are important. In all accident cases, the employee must notify his employer *within 45 days* from the date of the injury. Notice may be either written or oral. In large establishments, notice can be given to a foreman or other supervisory employee acting as a representative of the employer. The notice generally should include the time and place of the accident and the circumstances surrounding the injury. Inaccurate information given at this time will not necessarily bar future compensation.[51]

Application for *adjustment* of a claim must be made to the Industrial Commission *within a year after the date of the accident* where no compensation has been paid, or *within a year after the date of the last compensation payment received.* Thus, the employer may pay the employee immediately for temporary total disability but not make payments for other types of disability. The employee can then submit his claim for further payments to the Commission within one year after he receives the last payment. *The furnishing of medical care is not considered a compensation payment for this purpose.*

ADJUSTMENT OF A CLAIM — ARBITRATION

The Commission files and numbers each application for adjustment. Notice of filing is sent to the respondent (that is, the person against whom the claim is made). The respondent usually is the employer. The case is now prepared for submission to an arbitrator for a hearing — the first step in what often turns out to be a long, difficult process.

There are 14 arbitrators on the staff of the Industrial Commission. Arbitrators are appointed by the State administration, and each time the administration changes hands, the turnover is almost complete. Each arbitrator is a full-time employee and receives $7,000 per year.

The 14 arbitrators are assigned throughout Illinois on the basis of the work load. Nine of the 14 are located at the Industrial Commission offices in Chicago, since a majority of the claims arise in that heavily industrialized area. The rest of Illinois is divided into five general regions as follows:

1. Granite City, Alton, East St. Louis, and Belleville.
2. Springfield, Peoria, Taylorville, Bloomington, Rock Island, and Pekin.
3. Mt. Vernon, Herrin, Cairo, Benton, DuQuoin, Harrisburg, and Fairfield.
4. Quincy, Decatur, Danville, Mattoon, Galesburg, Kewanee, and Jacksonville.
5. Sterling, Rockford, Ottawa, Joliet, Kankakee, Wheaton, Elgin, and Freeport.

Ordinarily a dispute is heard by a single arbitrator. In cases involving fatal injury or total permanent disability, a committee of three arbitrators may be used upon petition of one of the parties to the dispute. However, this right is rarely exercised.

LEGAL REPRESENTATION

Recent experience shows that approximately three-fourths of the employees who bring cases to the Industrial Commission are represented by lawyers. Occasionally, an individual employee may come to the Commission's office in Chicago seeking information concerning his case. Such general information usually is provided by the Commission secretary.

In most cases, an employee is represented by a lawyer at a hearing before an arbitrator. Unions often advise injured employees to seek legal aid before attempting to settle a claim with an employer, and a few unions have staff members who supply this aid in simpler cases. A union also may refer a member to a lawyer it believes competent and trustworthy.

The employer is almost always represented by legal experts in handling claims for compensation. In the first place, the majority of employers have insured their liability under the Act with licensed insurance companies. When a compensation case arises, it is referred immediately to the insurance company which usually has a staff of lawyers and claims adjusters well versed in workmen's compensation procedures. Generally the insurance company tries to reach a settlement before the claim is taken to the Commission, but failing in this, it will act as the employer's representative in any later hearings before the Commission or the courts.

Secondly, employers who insure their own liability usually also have their own lawyers or claims adjusters. Many of the larger firms have a

"comp" man on their staff. Some self-insurers, without a company lawyer or with a less complete legal staff, may employ a claims agency which specializes in compensation cases. Others merely hire a lawyer when the need arises.

PREPARATION FOR THE HEARING

In working on a case before a hearing, attorneys for each party look for the issues. For example, if the "arising" question is involved, they examine the circumstances of the accident, attempt to find witnesses who can substantiate their client's claim, and study past court decisions to see if there are any precedents that will bolster their arguments. The most common claim in dispute, however, deals with the nature and extent of the injury. The employee and employer representatives try to determine the percentage of disability or loss of use of a specific member injured in the accident. This may influence the size of the final settlement.

Very few firms use the "stipulation waiver" method to settle cases concerning the nature and extent of injury. In this method, the employee is examined by a doctor on the Industrial Commission's staff. Both parties agree beforehand that they will accept this doctor's report concerning the employee's injury and disability. The amount of compensation to be paid is then determined by the Industrial Commission. An order is entered by the Commission which disposes of the case on the basis of the parties' previous agreement, and compensation is fixed by the Commission.

PHYSICAL EXAMINATIONS

In many cases involving the nature and extent of injury, settlement is not so harmonious. Typically, the employer will ask the employee seeking compensation to take a physical examination. If the employee refuses, he forfeits any compensation he may be receiving, and no compensation will be paid for the period of his refusal. There is no limit on the number of *reasonable* examinations that may be requested. The fact that an employer completely denies any liability in the case does not affect his right to have the employee examined.[52]

The employer selects the examining doctor and assumes the expense. If the examination is not made in the vicinity of the place of employment, he also reimburses the employee for any necessary expenses in traveling to and from the place of examination. In addition, the employer must pay the employee for any time lost from work, on the basis of his average daily wage.

The employee has the right to bring his own doctor to the examination — at his own expense. No matter whose doctor makes the physical examination, a report must be delivered to the other party at least 48 hours before the time set for the hearing before the arbitrator. If reports are not exchanged, the examining doctor is not permitted to testify at the hearing if the other party objects. In practice, medical reports are seldom exchanged. The examining doctor submits his report with carbon copies to the party requesting the examination. The latter than decides whether he wishes to exchange reports.[53]

The doctor who is treating the employee for his injury is not necessarily the one who examines him to determine the extent of disability. Many lawyers feel that "treating" doctors tend to be too optimistic about the prospects for recovery and are not experienced enough in judging industrial loss of use of a member as opposed to physical loss. However, a report of the treating doctor usually is sent to the employer's representative who can then make some estimate of the seriousness of the injury and the probable extent of disability and compensation payments.

Lawyers who handle compensation cases regularly often refer their clients to certain doctors in whom they have confidence. This confidence does not necessarily apply to the doctor's medical ability, but rather to his familiarity with workmen's compensation. Some doctors may be labeled "petitioners' " or employees' doctors, others may be "respondents' " or employers' doctors, and a few may have a reputation for being willing to accommodate both sides.

It is pointed out, however, that this condition is found primarily in Chicago where a heavy volume of cases comes before the Commission. There a small number of physicians may rely upon fees for workmen's compensation examinations and testimony for a large share of their income. Because of this situation, many initial reports of examining doctors are not taken seriously by attorneys for either side. Medical reports on the same injury may be very different. For example, a doctor hired by an employee may maintain that an injured arm is 75 per cent disabled, while the employer's doctor may report only 40 per cent disability.[54]

In some cases the employee may be re-examined several times by doctors on both sides. These re-examinations are made for various reasons — to check on the first doctor's report, to obtain a number of similar reports to fortify the argument for one side, or to get the opinion of a doctor whose medical ability commands greater respect from the lawyers on both sides.[55] Although the examining doctor may not testify personally, his report often is submitted in evidence if and when the case is brought to a hearing.

PRE-TRIAL CONFERENCES

Many disputed cases never reach the arbitrator. Instead they are settled in informal "pre-trial conferences" between the lawyers for each side.

Usually neither side is anxious to bring the case to arbitration. Hearings are time-consuming, and any decision handed down may be appealed later to the Commission and the courts. This creates some pressure on the individual lawyer to settle each claim without prolonging the case in proceedings before the Commission. Most lawyers, however, undoubtedly have a deep concern for the interests of their clients and will continue to press a claim until they believe a just settlement has been reached.

In a "pre-trial conference," the attorneys meet, discuss the various aspects of the case informally, and often arrive at a compromise agreement. The compromise generally is somewhere between the two extreme estimates of disability submitted by the examining doctors. The lawyers estimate the strength of each other's case and the possible outcome if it were taken to arbitration. Some lawyers are anxious to settle; others will drive a harder bargain. One lawyer's professional estimate of the other's ability may also enter into his decision to compromise for a given percentage of disability.

COMPROMISE SETTLEMENTS

A majority of the compromise settlements are for a lump sum. This means that the estimated future benefit payments are lumped together and paid at one time. Often these lump sum settlements are less than the total benefits would be if they were paid in weekly installments.

> For example, the attorneys may compromise on 50 per cent loss of use of a hand. Under the provisions of the specific loss schedule, this amounts to 95 weeks' compensation. If an employee's weekly benefits would be $30.00, his total benefits would be $2,850. The compromise might be a lump sum of $2,500. In fact, after a while employee and employer representatives tend to figure benefits in terms of lump sums — $5,000 for a hand; $2,000 for a thumb.

When the two parties agree, a settlement contract is drawn up and submitted to the Commission. An additional petition for lump sum payment is prepared when such payment is agreed upon.

Although a majority of the Commission members must approve each settlement contract, the agreement is first brought before a single Commissioner. The proceedings usually are brief. The employee is sworn in by the Commissioner. The settlement agreement is read to him, and he is asked whether he fully understands it and agrees to the provisions. If

there is a lump sum involved, the Commissioner asks if he realizes that this will close his case forever. The lawyer for the employee is asked the amount of his fee and what percentage it is of the total benefit. The Commissioner then approves the settlement and passes it on to two other members of the Commission for their signatures. They, in turn, look over the settlement contract and usually sign it.

Approval by the Commission is not always cut-and-dried, however. Because most Commissioners have long experience with the law, they can easily recognize an unjust settlement. Often they examine the employee personally to get an estimate of his disability, and they are quick to note any glaring discrepancy between the extent of injury and the amount of the settlement. In such a case, they may disapprove a settlement and make recommendations. If a settlement is disapproved, the lawyers may either confer again and try to reach a new agreement or decide to take the case to arbitration.

Ironically enough, it is sometimes the injured employee who is overly anxious to settle. He is swayed by the prospect of a large sum of money coming at one time, even though it is less than he should get. There have been cases where the employee has gone to a Commissioner strongly requesting approval of a settlement even though the Commissioner disapproved it as being against the worker's best interests.

THE ARBITRATION HEARING

In the fiscal year 1953-54, there were slightly more than 4,000 arbitrators' decisions out of less than 18,000 applications for adjustment of claims.[56] Although the informal nature of the proceedings is emphasized, hearings are conducted in accordance with legal principles, including Rules of Evidence used in regular court trials. A "court reporter" is on hand to make a complete transcript of the hearing. Each party is permitted to cross-examine witnesses.

Evidence must be based upon objective symptoms and not on the "feelings" of the injured employee. Where there have been no eye-witnesses to an accident, circumstantial evidence may be admitted. Testimony and opinions of expert witnesses (such as doctors) are accepted only if the expert is found "qualified." Opinions and conclusions of nonexperts may be rejected if either of the lawyers objects. A doctor who has examined the employee specifically to testify cannot base his opinions on the "history of the case."[57]

The role of the arbitrator is somewhat limited. He may request any of the parties to introduce certain records or evidence. He also may call for X-rays bearing on the case. An X-ray viewing machine is generally located in the hearing room for the use of the arbitrator or any medical

witness who presents these films to support his opinions and conclusions.

However, the arbitrator cannot go too far in questioning the witnesses directly when attorneys for both sides are present. The Supreme Court of Illinois has ruled that generally he must limit his questions to requests for clarification of testimony already presented.[58] On occasion, the arbitrator may examine the injured employee personally. Because of limitations on the arbitrator's role, the hearing may be overshadowed by legal interplay between attorneys (much like any other court trial) rather than a more straightforward determination of the facts. The arbitrator acts as judge and rules on the form or admissibility of certain evidence.

Great amounts of conflicting testimony may make it difficult for an arbitrator to reach a just decision. Often the points in conflict relate to complex medical questions. In most cases, an arbitrator has no formal medical training. Instead he must acquire most of this technical knowledge by listening to medical testimony during the hearings. The arbitrator may examine the injured employee personally in the hope of shedding some additional light on a claim, but he is confronted with his professional limitations.

An arbitrator has other problems. In the first place, he may not be a lawyer, and thus he might lack the legal training helpful in applying Rules of Evidence and other legal concepts. Secondly, after a while he comes to know the various lawyers and doctors with whom he is dealing. On the basis of his experience, he may tend to discount the testimony of one doctor more than another, or have greater faith in the integrity of one lawyer as opposed to another. Often these feelings cannot help but enter into his final decision. However, most decisions are on the "weight of the evidence." Since an arbitrator's decision technically is only a recommendation, it need not be the final step.[59]

APPEALS

APPEAL TO THE COMMISSION

After the arbitrator has made his award, the parties have three alternatives: (1) They can accept the award and settle the case. (2) They can use the arbitrator's award as the basis for a compromise settlement. (3) They can take the case to the Industrial Commissioners for further review. In recent years fewer than one-quarter of the arbitrators' awards have been appealed to the Commission.[60]

The Industrial Commission is composed of five members — two representing employers, two representing employees, and the chairman who represents the general public. They are appointed for four-year

terms by the Governor with the approval of the State Senate. Terms of office are staggered in the hope that experienced men will be serving on the Commission at all times. One Commissioner has retained his position for 15 years, under several different State administrations. Many of the Commissioners are lawyers, and most have had considerable experience with workmen's compensation.

The Commission hears appeals, determines the acceptability of settlements brought before it, and transacts other routine administrative duties at its home office in Chicago. During the second week of the month, each Commissioner travels downstate to hear appeals and pass judgment on settlements in cases arising in those areas. The downstate region is divided into four parts for this purpose:

1. Peoria, LaSalle, Galesburg, Quincy, and Rock Island.
2. Harrisburg, Benton, Lawrenceville, Centralia, and Cairo.
3. Joliet, Rockford, Aurora, Kankakee, and Evanston.
4. Danville, Springfield, Decatur, and East St. Louis.

Certain conditions must be satisfied before an appeal can be heard before a Commissioner. The party seeking review must file (1) a "Petition for Review of Decision of Arbitrator" within 15 days after receipt of the arbitrator's award, and (2) a typewritten transcript or an agreed statement of the facts of the previous hearing within 20 days after receipt of the arbitrator's award. The Commission may extend the time limit on the second requirement up to 30 days.

The petitioning party may lose the right to have a decision reviewed by the Commission if the necessary papers are not submitted in time. However, if the transcript is filed late, the requirement may be waived by the other party, although he has the right to object. But if he participates in the hearing without any objection, he cannot raise it at a later time.[61]

A single Commissioner hears the first review. Such a hearing includes a review of the evidence already presented to the arbitrator. Parties to the dispute are represented by their lawyers, new evidence may be introduced, and witnesses may be called to testify. The Commissioner can deal with all questions of law and fact in the case. He may uphold the arbitrator's award, change it, or reverse it. He files his decision and sends a copy of the award to the parties or their attorneys, noting the time when it was filed.

ORAL ARGUMENT

If the lawyer of either the employee or the employer decides that he wants a case heard before other members of the Commission, he may

request a review by at least three of the Commission's five members. This is called "oral argument."

Oral argument before the Commission is of a more formal nature than the earlier proceedings. The parties are given notice ten days before the date of the hearing. Generally all five Commissioners are present. The hearing opens with a discussion of the case by the Commissioner who handled it before it came to full review. The lawyers are given a total of 20 minutes each for arguments and rebuttal. The Commissioners often ask the attorneys specific questions to clarify points or to seek additional information. They also may clear the hearing room and examine the injured employee personally. The Commissioners then meet in private and arrive at a decision.

JUDICIAL REVIEW

In cases involving claims against the State of Illinois, the decision of the Industrial Commission is final. In cases involving private employers, the decision of the Commission may be appealed to the courts for further review. Fifteen days are provided after the date of the decision for the correction of any clerical errors or error in the computation of benefits. Proven existence of fraud, of course, makes the decision of the Commission or arbitrator subject to change.

Judicial review of a decision by the Industrial Commission provides for two levels of appeal: (1) the Circuit Court of the county or the City Court of the city in which the accident was sustained, if it is more than 25,000 population; and (2) the Supreme Court of Illinois.

TO THE CIRCUIT COURT

If there is dissatisfaction with the award of the Industrial Commission, it may be appealed first to the Circuit or City Court. The case is tried primarily on the basis of the record presented. The record reviewed by the court must be complete; otherwise it may be presumed that the omitted section will act to sustain an award.[62] Presentation of the case is, of course, bound by all the traditional legal procedures. The court can pass judgment on both fact and points of law or interpretation of the Act.

The Circuit Court can take three courses of action: it may uphold the award of the Commission, it may reverse it, or it may send it back to the Commission for rehearing if there is doubt concerning the sufficiency of the evidence that has been presented. The Commission must follow the directives of the court.

In practice, very few cases are carried as far as the courts. Disputed claims reviewed by a court often involve an especially large award or some "principle" which one party (often the employer) feels is of great

importance to the future interpretation of the Act — thus justifying the expense of a court appeal. In the past three years, about 100 cases a year have been appealed to the Circuit Court — a small percentage of the total claims settled on all levels.[63]

TO THE ILLINOIS SUPREME COURT

The Supreme Court of Illinois is the highest court of appeal in the administration of the Workmen's Compensation Act. It considers only those issues which have already been presented in the lower courts or before the Commission. Points of dispute cannot be raised with the Supreme Court for the first time.

The approach of the Supreme Court to cases on review may vary from time to time. Where the facts of the case are not in dispute and the point in issue is a question of law, prior decisions of the Commission and the lower court are not binding.

> Thus, if both the employer and employee representatives agree that the employee lost 50 per cent use of his right hand from a severe case of frostbite, the Supreme Court generally will accept this as fact. However, it will pass judgment on the disputed contention that the accident and disability "arose out of and in the course of employment."

In regard to the facts of the case, the Supreme Court generally accepts the findings of the Commission, but there have been exceptions.[64] On issues which have not been clearly settled, the Supreme Court may pass judgment on considerations both of law and fact at its discretion.

The Supreme Court may uphold an award, reverse it, or send it back for further testimony or evidence. Except where a claim is sent back to the Commission for further evidence, the decision of the Supreme Court is final, and the case is settled one way or the other.

The Supreme Court has handed down very few amplified decisions. One study shows that between 1943 and 1952, the Supreme Court wrote 108 decisions concerning workmen's compensation.[65] A majority of these concerned the more legal issues like the employee-employer relationship and the "arising" question. However, the Supreme Court probably passed indirectly on many more compensation cases by exercising its right to refuse to take a case on appeal from a Circuit Court. In doing this, the decision of the lower court is upheld and becomes final. Lawyers say that the Supreme Court's refusal to take a case "speaks volumes" to them.

REOPENING A CLAIM

All cases, except those involving a lump sum payment, can be reopened even though an arbitrator, the Industrial Commission, or the courts have

made awards. If an employee has been receiving weekly benefit payments, his case can be reopened *under certain conditions.* He may reopen the case if he believes his disability has recurred or increased. The employer has the same right to reopen if he thinks the disability has decreased or ceased entirely. *Request for review of a settlement agreement or award must be made within 18 months from the date of the award.* If a voluntary settlement has been made, the case may be reviewed within 18 months of the date of the last voluntary payment. (A 1955 amendment allows an employee or employer 30 months from the date of the award to request a review. This applies only to accidents occurring after July 1, 1955.)

Reopening does not challenge the correctness of the settlement award. Cases may be reopened *only* when it is claimed that the disability has changed since the award was made.

> Thus, if an employee is awarded compensation for 20 per cent loss of use of a leg and his condition later becomes worse, he may attempt to gain additional benefits for his injury. The same principles apply when an employer wishes to cut down benefit payments because he believes an employee's condition has improved or disappeared since the settlement award was made.

It is unlikely that an employee can obtain additional benefits from a different injury arising from the original accident if this injury was not brought to light in the original proceedings.

> For example, an employee who was injured when he fell from a scaffold received compensation for loss of use of his right leg. The case was settled. Later, however, he felt that his left leg also had been disabled as a result of the fall. His attempt to reopen the case and seek compensation for disability to the left leg probably would be denied.

This highlights the need for a thorough physical examination at the time the original settlement is made.

An employee does not necessarily have to have received benefits to enable him to reopen his case — once the employer's liability has been established.

> For example, in processing a case it is determined that the accident arose out of and in the course of employment. But no disability is proven at that time. If some disability develops within the next 30 months, the employee can petition for review of the case and receive benefits in accordance with the Commission's judgment concerning his disability.[66]

When a claim is reopened, the party seeking new action has the burden of proving that the disability has changed. Fifteen days' notice of the hearing before the Commission is given to each party involved.

The decision of the Industrial Commission on such cases can be appealed to the courts in the same manner described above.

THE POOR PERSON'S PROVISION

Bringing a case to the Industrial Commission and perhaps to the courts is expensive. An injured worker may not be able to pay the high costs of making his claim. To take care of such a situation, the Act includes the so-called "Poor Person's" provision.

> Under this provision, an employee first must satisfy the Commission that he cannot meet the expenses involved in processing his claim. These expenses include the cost of obtaining transcripts of the record, issuing and serving subpoenas, filing of writs of appeal, and filing a bond. He is allowed to file his claim, and if he receives a favorable award or a settlement is made, the costs are deducted from his benefits and paid to the Commission. The employee receives the balance. *No charge is made if the employee is unsuccessful in pressing his claim.*

The "Poor Person's" provision is not used frequently because only a few compensation cases go beyond arbitration, and many unions will loan the necessary money to members if they need it. In some instances the employee's lawyer assumes the expense and is reimbursed when a settlement is reached. Nonetheless, this provision increases the possibility for an employee to pursue his claim past the arbitration level when financial help does not come from other sources.

PENALTY FOR DELAY

A basic philosophy of the Workmen's Compensation Act is rapid settlement — to provide the injured employee with compensation for injury when he needs it most. In line with this belief, the Act contains penalty provisions covering "any unreasonable or vexatious delay" of payment or "intentional underpayment of compensation. . . ." "Vexatious delay" also includes any proceedings before the Commission which "do not present a real controversy but are merely frivolous or for delay. . . ."[67] Penalty awards are 50 per cent of the amount payable at the time of the award.

Penalties for "vexatious behavior" are not very frequent, but this does not mean that such behavior is not found when settling or paying a claim. Certain delaying tactics may be used by representatives to affect the size of an award or to prevent a case from being settled quickly. These tactics, however, are generally accepted as "part of the game" and are recognized as such by representatives for both sides. In addition, it is not easy to prove "unreasonable or vexatious delay." The law pro-

vides many grounds for dispute which the parties may use without stretching the intent or letter of the law too much. Nevertheless, the law provides the authority to bring the more glaring cases of intentional delay to account.

SPECIAL PROBLEMS

THE LUMP SUM PAYMENT

Part of the original philosophy of workmen's compensation was that it would be better for an injured worker to receive smaller benefit payments in many installments than a single "lump sum," as had been the practice under common law proceedings. Thus, the worker would have a steady source of income to tide him over his period of disability.

The Illinois law states that lump sum payments may be made *when it appears to be in the best interests of the parties concerned,* as judged by the Industrial Commission. In practice, the lump sum payment has come into widespread use in Illinois, partly because of the practice of compromise settlements.

> Figures indicate that about three-fourths of the applications for adjustment of claim submitted to the Commission are settled eventually by contracts involving lump sum payments. In 1953, 9,629 claims were settled in lump sum payments. This was 21 per cent of all claims closed during that year.[68]

Settlement by lump sum payment often is linked to compensation cases arising under the specific loss schedule. Thus, 50 per cent loss of use of a hand may be settled with a $2,500 lump sum rather than by weekly payments strung out over many weeks. In cases of total disability, however, no lump sum payments can be approved until six months after the date of the accident.

Several other facts about lump sum payments should be remembered. All lump sum payments must be approved by the Industrial Commission. Lump sum payments are *not always equal* to the maximum amount payable. They may be compromised for lesser amounts. Unless there is an agreement to the contrary, the lump sum payment covers *all* of the employer's liability. The case is closed "for all time" and cannot be reopened. Finally, unless special provision is made, the employee also surrenders his rights to continuing medical care.

Several factors have led to extensive use of lump sum settlements. Attorneys involved are able to settle a case quickly without going through the time-consuming administrative hearings or judicial review. The injured employee is often anxious for a lump sum settlement. The employer's representative — in most cases the insurance company — also

finds advantages in such a settlement, for by accepting the lump sum the employee has closed his case for all time and cannot reopen it in case his disability increases. In addition, lump sum settlements often are less than benefits would be if paid in weekly installments. Thus the insurance company may save money in the long run.

Much criticism has been leveled at the increased use of lump sum settlements. Some spokesmen (of both employers and employees) have a feeling that they have "gotten out of hand." Others point out that chances for rehabilitation of the injured worker are reduced. Theoretically, the payment of benefits in installments will help the injured worker to rehabilitate himself and get back to work without too much personal financial strain. When he gets a large lump settlement, there is danger that he will spend the money rashly and leave himself with no further source of income. He might be forced to return to work before he is physically able.

These criticisms are matched by arguments in support of lump sum settlements. It is claimed that they speed up settlements which might otherwise bog down in prolonged hearings or judicial proceedings. They also prevent the appearance of "neurotic" workers who are plagued by imaginary aches and pains and hope to reopen their cases for additional compensation. Some spokesmen believe that a worker can rehabilitate himself best by working at a job where he can feel useful again. In addition, others contend that the weekly installments often are too small to support a family. A worker may need a larger sum to tide him over his disability period. Finally, the Act requires the Commission to approve all lump sum settlements, thereby offering some protection against unwisely giving large sums to spendthrift or irresponsible persons.

There seems to be some reaction against lump sum settlements. Some large companies, who are self-insurers, insist on paying benefits every week. Educational programs for union members often include discussions of the disadvantages of lump sum settlements. Some lawyers in the field believe there should be a tightening up of lump sum settlements — especially in cases involving permanent total disability where the employee may never return to work again.

THE LAWYER

Under the original theory of workmen's compensation, an employee or employer could go through the entire settlement process without the aid of a lawyer. Partly because of this, many workmen's compensation acts spell out disability procedures and benefit schedules in great detail. It was further believed that this detail would help correct some shortcomings of common law damage suits.

Despite these optimistic expectations, the lawyer still remains a major figure in the administration of the Illinois and other Acts because workmen's compensation has become not only a method of providing needed benefits to injured workers but also a system of law. As a system of law, it has many complex problems of interpretation and application.

In fact, workmen's compensation has produced legal specialists. Handling compensation cases requires special knowledge of the provisions of the Act and the many legal precedents involved. Compensation lawyers also learn certain medical facts and terminology which is so often an important part of any hearing or appeal to the courts. Particularly in disputed cases, the use of a lawyer or some highly trained person is almost a necessity. Many unions, in fact, refer their members to attorneys. Some of these labor lawyers have come to be known as "petitioners' " attorneys.

The widespread use of lawyers in compensation cases in Illinois has resulted in many criticisms. However, informed sources say that these criticisms apply to a relatively few cases. In most instances compensation lawyers act with a sincere regard for the law and their client's interests.

First, some people claim the employer and employee could settle easily many cases now handled by lawyers. If an employee hires a lawyer, he must, of course, pay the fee. Thus his total benefits are reduced. Second, some lawyers are accused of "claim-chasing." A few eager attorneys try to pad their practices by soliciting injured workers. They may file for a claim adjustment as soon as they get a case, regardless of the facts, in order to keep other lawyers, promising larger awards, from luring their client away.

However, the Industrial Commission does regulate lawyers' activities to a certain degree. For example, it is in the Commission's power to review a lawyer's fees for compensation cases. Most fees are paid on a contingency basis — that is, the lawyer receives a percentage of the award if he wins. He may go away empty-handed if he loses.

The attorney must list his fee on the settlement contract which is submitted to the Industrial Commission. If a lawyer has prepared a case, he usually is allowed 20 per cent of the settlement. However, in other cases of a more cut-and-dried nature, the Commission will approve only a flat fee considerably less than 20 per cent.

> For example, an employee who loses an arm at the shoulder receives a lump sum settlement of $5,000. There has been no real dispute in the case, but the employee has hired a lawyer to handle his claim. Here the lawyer will not receive $1,000 or 20 per cent of the settlement, but probably around $100.

The fee will be measured in terms of the lawyer's time on the case rather

than the amount of the award. Some lawyers have been known to handle cases of needy workers for nothing.

A potential agency for self-regulation is an association of compensation lawyers formed in Chicago. In addition, bar associations have the power to discipline members if abuses are detected.

Doubtless both employers and employees will continue to use lawyers in compensation cases. Many of them will need legal advice because of the complicated nature of the workmen's compensation system. It would be almost foolhardy for an injured employee who does not know how the law works to make his way through the many petitions, forms, and hearings involved in settling a *disputed* claim. A few may try, but they risk losing compensation benefits because they can easily overlook time limits or neglect to fill out required forms.

MEDICAL CARE

Provision for virtually unlimited medical care has been cited as one of the strong points of the Illinois Act. Under the law, the employer is required to offer an injured employee all the medical care reasonably necessary to cure him of his disability or relieve him from the effects of the accident. This includes doctor's fees, hospitalization, surgery, and institutional care for more severe cases. Thus, the cost of medical care has been quite heavy — in some cases far surpassing the sum the worker is paid for the disability itself.

For the calendar year 1953 it is estimated that medical costs were approximately $14,000,000. For the same year medical costs averaged $168 per case on claims for which full data are available. In comparison, average compensation was $506.[69]

An Illinois State Medical Society study provides some added insight into the operation of medical care programs under workmen's compensation in Illinois.[70] This report is generally critical and highlights alleged abuses in medical relations under workmen's compensation. The following paragraphs summarize this report briefly.

Most physicians who handle compensation cases are selected by insurance companies and claims services. Self-insurers choose their own physicians or have extensive medical programs. These are "employers' physicians." When the employer provides medical care, the employee who uses his own doctor must pay his own bills. A common exception is a hernia case where, under a lump sum payment of around $250, the employee is able to select his own doctor for the operation.

The policy of most employers and their representatives is to give the injured worker the best medical care possible. Although the quality

and amount of medical care has improved through the years, a number of problems remain:

1. Some supervisors are reluctant to refer a worker with a minor injury to the medical department. Minor injuries, if neglected, may lead to serious illness or disability.
2. Some doctors overlook the industrial implications of injuries.
3. Some doctors are reluctant to refer a worker to a specialist when needed.
4. Some companies and physicians overemphasize low lost-time records, and workers are returned to jobs before they are fully recovered.
5. In some cases, an employee is not encouraged to have a needed operation. Refusal of a major operation, whose outcome is uncertain, does not, however, mean that an employee loses his right to additional medical care.[71]

Many of the complaints are not against specific practices but involve "undertreatment" or "overtreatment," and some result from the fact that in most cases the employee cannot select his own doctor.

Other criticisms are directed at a small number of doctors who testify regularly at compensation hearings. Some are evasive in answering even the simplest questions; some use overly technical and confusing testimony, tending to exaggerate or understate the extent of disability; others may be quick to establish cause-and-effect relations in cases involving aggravation of pre-existing injuries. A few doctors testify as "experts" in many different fields of medicine even though they are not fully qualified.

Some attorneys involved in the hearings also come in for criticism in the report: cross-examining lawyers often browbeat doctors who testify, may ask confusing or misleading questions impossible to answer, or may press for a "yes" or "no" reply in situations where such a reply is difficult or impossible; doctors are sometimes given insufficient notice before they are called to testify, or they may be forced to wait around for a long period of time, once at a hearing. For these reasons, many competent and well respected doctors refuse to testify.

The State and national medical societies have called for action to correct what they consider abuses in medical relations under workmen's compensation. Following publication of their study, representatives of the medical societies met with the Industrial Commissioners and asked them to report "unethical" doctors to the medical societies. Local chapters of these societies are expected to take the necessary steps to discipline their members.

INSURANCE

Under the Illinois Act, a covered employer must insure his liability. Most employers use commercial insurance companies authorized to operate in Illinois. Policy provisions are subject to the approval of the Industrial Commission. The Commission can authorize an employer as a "self-insurer" if the Commission is satisfied with his ability to assume the risk. A bond or surety may also be required.

Some employers are refused insurance by commercial carriers. Under a 1937 Illinois law, an employer turned down by an insurance company applies to the Commission.[72] The Commission, in turn, designates a carrier to issue a policy. These so-called "bad-risk" policies are distributed among the carriers, and any losses are covered by "reinsurance pools." Insurance companies must belong to these pools. When an employer applies to the Commission, he must (1) not have missed any compensation insurance payments during the previous 12 months, (2) pay the annual premium in advance or make provision to pay when due, and (3) assure the Commission that he is complying with laws relating to worker health, welfare, and safety.

Insurance rates are complicated and need not be examined here. Rates for a particular firm are related to industry classification, occupations, production processes, and the firm's previous "loss experience." In general, rates have been declining — a drop of 26.8 per cent from 1941 to 1951 compared with a decline of 19.1 per cent for the nation as a whole. Approximately 52 cents of each premium dollar goes into compensation benefits and medical costs. The rest of the dollar pays for inspecting premises, adjusting claims, and other insurance business expenses.[73]

Insurance companies play major roles in settling compensation cases and providing medical care. Benefit payments are almost always met. Most large, well established companies have reputations for fair and realistic policies in handling cases. Although they may have differing reputations as to the degree of their "toughness" or "reasonableness," they generally aim to be known as "hard but fair" bargainers. Only a few small, less secure insurance companies allegedly tend to "cut corners" and go to excessive lengths to reduce a claim.

Apparently there is little sentiment in Illinois for adopting a State-administered general insurance fund, although several states have them. The widespread use of commercial carriers probably will continue undisturbed in Illinois.

AMENDING THE ACT

The Workmen's Compensation Act in Illinois has been amended often. Most amendments involve benefit provisions. The usual procedure is the

"agreed bill process," a method traditionally used in drafting and amending labor legislation in the State of Illinois.[74] The Act was last amended in June, 1955. The amendments are reflected in this *Bulletin.*

The "agreed bill process" means that representatives of leading labor and employer groups affected by the legislation participate in drafting the amendments. Proposed changes in the Act are referred (by the appropriate subcommittees of the House and Senate judiciary committees) to an advisory committee composed of representatives of the various interested groups. After a "public meeting," presided over by the chairman of the Industrial Commission, a subcommittee of the advisory committee meets in private until it reaches an agreement. The agreed changes are taken back to the parent labor and employer organizations for approval. Sometimes the committee must meet again before final agreement. The "agreed bill" is resubmitted through the various legislative committees and is likely to be enacted. If the advisory committee fails to reach an agreement, the Legislature is not likely to act.

Those who have participated in this process report that the "bargaining" has generally been carried out in good faith, and changes once agreed to are not opposed later. The advantages of the "agreed bill process" are said to be — (1) some changes, such as increased benefits, may be obtained more quickly than by other methods; (2) those who know the technicalities of workmen's compensation can work out solutions away from the heat of politics. The disadvantages are said to be — (1) the process leads to "patchwork" amendments; (2) the advisory committee does not always have the most experienced men; (3) the procedure is not subject to public scrutiny; and (4) some management people feel they always "give" and receive little in return.

In spite of some dissatisfaction in both employer and labor groups, the "agreed bill process" seems likely to continue, partly because it is an orderly system of achieving compromise among competing interests.

REHABILITATION

Industrial injuries raise problems of compensation, rehabilitation, and safety. The Illinois Workmen's Compensation Act does not deal directly with either rehabilitation or safety. Some medical care provisions, however, relate to rehabilitation. In amputation cases, the employer is required to pay for artificial members or braces when necessary. Medical treatment may include physical therapy or other corrective measures.

The Special Fund, described on page 24, pays the difference between compensation for one member and compensation for permanent total disability. Thus, an employer may feel more free to hire a worker who

has lost the use of one member since he will not be responsible if the employee should lose the use of a second. This increases the chances for employment of handicapped workers.

In addition, an informal relationship exists between the Industrial Commission and the Illinois Division of Vocational Rehabilitation. The latter may receive employment-problem cases from the Industrial Commission and has access to Commission records. The Division of Vocational Rehabilitation had 777 work-injury cases (out of 12,958) in the fiscal year 1952-1953.[75] The Division provides many services to the disabled (diagnostic, medical, surgical, psychiatric, training, use of artificial limbs), but the recipient must show he cannot afford to pay for these services. Weekly benefit payments or a lump sum settlement *may* disqualify him.

Rehabilitation that restores an injured worker to his place in industrial society obviously is important. In addition, techniques in surgery, therapy, psychiatry, and vocational training have greatly improved in recent years.[76] An important problem in Illinois is how to bring workmen's compensation and rehabilitation closer together. Seventeen states have provisions in their workmen's compensation laws to provide, promote, or facilitate rehabilitation. Ohio, Oregon, Rhode Island, Washington, and Puerto Rico operate rehabilitation directly under their workmen's compensation systems. In Illinois, considerable study of costs, methods of financing, and expansion of facilities is needed. Rehabilitation experts claim that an expanded rehabilitation program would really pay for itself in reducing cases of partial or total permanent disability and in putting disabled workers back to work.

INDUSTRIAL SAFETY

The most direct way to reduce workmen's compensation costs is to prevent accidents. Employers, workers, and unions participate in and benefit from safety programs. Insurance companies influence safety programs through inspection of clients' premises and, in some cases, through refusal to insure an employer.

The Illinois Health and Safety Act links workmen's compensation with industrial safety. Under the law, the Industrial Commission writes regulations concerning the health and safety of employed persons. The rules relate to such matters as guarding machinery, removing gases and vapors, using construction equipment, and handling and storing harmful substances. In general, the Commission makes the rules on the basis of information and arguments presented by interested parties at hearings held for this purpose. The courts may judge the reasonableness or legality of a regulation if a petition for review is submitted within 90 days after the Industrial Commission enters the rule.

The Illinois Department of Labor enforces health and safety rules. Factory inspectors can visit any place of employment in the State affected by the rules to detect possible violations. If an employer continually violates safety rules, he is guilty of a misdemeanor and may be fined between $25 and $200 for continuing offenses. In 1953, the Illinois General Assembly created the Workmen's Safety and Education Investigating Commission which reported its recommendations in 1955.[77]

It is difficult to estimate the effect safety programs have had upon the over-all accident rate. It would be even more difficult to trace the impact of workmen's compensation on industrial safety and thus on the number of work injuries. Many factors enter into such an appraisal. The total number of workers employed is a significant factor. The increasing degree of mechanization of production also is important. In many cases, it is difficult to determine whether a certain safety program was initiated because of concern for compensation costs.

Nonetheless, the number of industrial injuries has been declining in Illinois.[78] In 1927, 28 out of every 1,000 nonagricultural workers suffered compensable injuries. By 1954, the rate had dropped to 16.8 out of every 1,000, although the accident rate went up and down several times during those years.

In addition, the industrial death rate dropped even more sharply during the same period. In 1927, there were 37 fatal injuries in every 100,000 workers. By 1954, this rate had been cut to 13.9, less than half the earlier figure. Apparently significant progress has been made in preventing major accidents due to faulty machinery or inadequate safeguards rather than human error.

Safety specialists are especially interested in negligence or apathy on the part of many small employers. Because of shortsightedness or extremely competitive business conditions, these employers often do not have necessary safeguards on their machinery or on their premises in general. The employer may not know the effect of this policy until he is forced to make a compensation settlement of $1,000 where a $30 machine guard might have prevented an accident.

SUMMARY

Workmen's compensation is an accepted element in industrial society today. The need for such legislation arose because the old common law system of compensation for work injuries was slow and inadequate. Workmen's compensation laws are attempts to replace the old system with rapid administrative justice, to substitute certainty for the uncertain awards of the past. They are designed to protect the worker from the hazards of industrial employment without considerations of blame.

Workmen's compensation, however, is not as simple in operation as the early sponsors hoped it would be. In Illinois, as in other states, the detailed provisions of the Act have been interpreted and reinterpreted by the Industrial Commission and the courts. Benefit awards may depend on many factors — the employee-employer relationship, circumstances of the accident, proper reporting, the nature and extent of injury, and whether a claim is disputed. Also, the amount of compensation often is affected by the testimony and judgment of medical experts. Because the system is complex, lawyers often are asked to handle the cases. Frequently it is necessary to reach a compromise settlement.

In recent years interest in workmen's compensation problems has increased both in Illinois and elsewhere in the nation. People familiar with the system are unlikely to say it is perfect. Many aspects are criticized and various changes have been sought. These criticisms and changes, moreover, are aimed at both the substance and administration of the Act.

Those who work with the law (Commissioners, lawyers, and others) agree that one of the first steps in seeking solutions to the many problems surrounding workmen's compensation is more education — that is, a wider knowledge of how the system operates. Both employers and employees should understand thoroughly their rights and responsibilities under the law. Such understanding aids sound administration, improves programs of safety and rehabilitation, and can help pave the way for desired changes in the future. This *Bulletin* is intended to be a small contribution to a better understanding of the system.

FOOTNOTES

1. *Annual Report on Compensable Work Injuries, 1954* (State of Illinois, Department of Labor, Division of Statistics and Research, August, 1955), Part I, p. iii.
2. See Walter F. Dodd, *Administration of Workmen's Compensation* (New York: Commonwealth, 1936), pp. 7-13.
3. Thomas C. Angerstein, *Illinois Workmen's Compensation* (Chicago: Burdette Smith, 1952), Vol. I, pp. 1-16.
4. Dodd, pp. 16-17.
5. Dodd, pp. 18-34.
6. "Workmen's Compensation Legislation in 1949," *Monthly Labor Review,* Vol. LXIX (November, 1949), p. 514.
7. Angerstein, Vol. I, p. 14.
8. Angerstein, Vol. I, p. 15.
9. Dodd, pp. 41-49.
10. *Illinois Workmen's Compensation Act,* Preamble.
11. *Illinois Workmen's Compensation Act,* Section 3.
12. *Illinois Publishing and Printing Co. v. Industrial Commission,* 299 Ill. 189 (1921).
13. *Peterson v. Industrial Commission,* 315 Ill. 199 (1925).
14. *Chicago Cleaning Co. v. Industrial Board of Illinois,* 283 Ill. 177 (1918).

15. *Ascher Bros. Amusement Enterprises v. Industrial Commission,* 311 Ill. 258 (1924); and *Peterson v. Industrial Commission,* 315 Ill. 199 (1925), respectively.
16. In cases of voluntary coverage, the employee retains his right to reject coverage by notifying the Commission of his intentions either 30 days after he is hired or at least 10 days before the beginning of a new year. By rejecting coverage the employee keeps his right to seek damages for injury at common law. Although the right of rejection is written into the law, no employee has ever refused coverage within the memory of those who administer the Act.
17. See *Illinois Publishing and Printing Co. v. Industrial Commission,* 299 Ill. 189 (1921); and *Village of Chapin v. Industrial Commission,* 336 Ill. 461 (1929).
18. *Annual Report on Compensable Work Injuries, 1954,* Part I, p. 4.
19. *Illinois Workmen's Compensation Act,* Sections 1 (a)(2) and 1 (b)(2).
20. *Indian Hill Club v. Industrial Commission,* 309 Ill. 271 (1923).
21. *Crepps v. Industrial Commission,* 402 Ill. 606 (1949).
22. *Central Illinois Light Co. v. Industrial Commission,* 359 Ill. 430 (1935).
23. *Allen-Garcia Co. v. Industrial Commission,* 334 Ill. 390 (1929).
24. *City of Pekin v. Industrial Commission,* 341 Ill. 312 (1930); and *Murphy v. Industrial Commission,* 355 Ill. 419 (1934), respectively.
25. *Beall Bros. Supply Co. v. Industrial Commission,* 341 Ill. 193 (1930).
26. *Illinois Workmen's Compensation Act,* Section 1 (a)(3). See also *Baker and Conrad, Inc. v. Chicago Heights Construction Co.,* 364 Ill. 386 (1936).
27. *Steel Sales Corporation v. Industrial Commission,* 293 Ill. 435 (1920).
28. *Fluor Corporation v. Industrial Commission,* 398 Ill. 616 (1948).
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32. *United States Fuel Co. v. Industrial Commission,* 313 Ill. 590 (1924).
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38. *Brooks Tomato Products Co. v. Industrial Commission,* 311 Ill. 207 (1924).
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41. *Payne v. Industrial Commission,* 295 Ill. 388 (1921).
42. *Pekin Cooperage Co. v. Industrial Board of Illinois,* 277 Ill. 53 (1917).
43. *Scholl v. Industrial Commission,* 366 Ill. 588 (1937); and *City of Chicago v. Industrial Commission,* 292 Ill. 406 (1920), respectively.
44. Average annual wage is computed on the basis of remuneration the injured person received as salary, wages, or earnings from his employer during the year preceding his injury. If the employee was off the job for some unavoidable cause or if he did not work for the same employer for a full year before his accident, his annual wage is figured on the basis of what other employees in the same job class received during the preceding year. If annual earnings cannot otherwise be determined, they can be figured as 300 times the average daily earnings for jobs where it is the custom to work a full year or 200 times the average daily earnings where it is the custom to work only part of the total number of working days per year.

45. See Herman M. Somers and Anne R. Somers, *Workmen's Compensation* (New York: Wiley, 1954), p. 89.
46. *Mount Olive Coal Co. v. Industrial Commission,* 295 Ill. 429 (1921).
47. Angerstein, Vol. II, pp. 323-327, and supplement to Vol. II, pp. 61-63.
48. *Williams Co. v. Industrial Commission,* 303 Ill. 352 (1922).
49. See Somers and Somers, pp. 90-92, and Harland Fox, "Company Supplements to Workmen's Compensation," *Management Record,* Vol. XVII (January, 1955), pp. 19-22.
50. *Annual Report on Compensable Work Injuries, 1953,* Part II, pp. 7-8.
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53. Council on Industrial Health, American Medical Association, and Committee on Industrial Health, Illinois State Medical Society, *Medical Relations Under Workmen's Compensation in Illinois,* 1953, p. 30.
54. Based on personal interviews with administrators, lawyers, and doctors associated with workmen's compensation.
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56. *1953-1954 Annual Report* (State of Illinois, Department of Labor), p. 37.
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58. *Heyworth v. Industrial Commission,* 321 Ill. 298 (1926).
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60. *1953-1954 Annual Report,* p. 37.
61. *Taylor Coal Co. v. Industrial Commission,* 301 Ill. 381 (1922).
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67. *Illinois Workmen's Compensation Act,* Section 19 (k).
68. *Annual Report on Compensable Work Injuries, 1953,* Part II, p. 8. Also estimates of Industrial Commissioners interviewed.
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70. Council on Industrial Health, pp. 10-21.
71. *Florczak v. Industrial Commission,* 381 Ill. 120 (1942). On the other hand, an employee who persists in injurious practices which retard his recovery may have his payments reduced or suspended by the Commission.
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